

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 6129 of 1990

with

SPECIAL CIVIL APPLICATION No 394 of 1991

with

SPECIAL CIVIL APPLICATIONS NOS.3350/1991, 1766/1991,  
1493/1991, 1495/1991, 6454/1991, 6456/1991, 6465/1991,  
5490/1991, 5297/1991, 5012/1991, 3911/1991, 1490/1991,  
1491/1991, 1537/1991, 1681/1991, 1237/1992, 1593/1991,  
5011/1991, 6676/1991, 1724/1991 & 861/1992.

For Approval and Signature:

Hon'ble MR.JUSTICE R.K.ABICHANDANI

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1. Whether Reporters of Local Papers may be allowed : YES  
to see the judgements?
2. To be referred to the Reporter or not? : YES
3. Whether Their Lordships wish to see the fair copy : NO  
of the judgement?
4. Whether this case involves a substantial question : NO  
of law as to the interpretation of the Constitution  
of India, 1950 of any Order made thereunder?
5. Whether it is to be circulated to the Civil Judge? : NO
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SANSKARBHARTI AMRAPUR

Versus

GOVT. OF GUJARAT

Appearance:

1. Special Civil Application No. 6129 of 1990  
MR PRAVIN GONDALIYA for Mr YS Lakhani & CH SHAH for Petitioner  
MR RM DESAI for Respondent No. 1, 2, 3
2. Special Civil Application No 394 of 1991  
MR PARESH M DAVE for Petitioner

MR UA Trivedi, AGP, for Respondent No. 1, 3

NOTICE SERVED for Respondent No. 2

3. SPECIAL CIVIL APPLICATIONS NOS.3350/1991, 1766/1991,  
1493/1991, 1495/1991, 6454/1991, 6456/1991, 6465/1991,  
5490/1991, 5297/1991:-

Mr Pravin Gondalia for Mr Yogesh Lakhani for the  
Petitioners

Mr U.A. Trivedi ld. AGP for the State

4. SPECIAL CIVIL APPLICATIONS NOS. 5012/1991,  
3911/1991, 1490/1991, 1491/1991, 1537/1991,  
1681/1991, 1237/1992, 1593/1991, 5011/1991, 6676/1991,

Mr Deepak Dave for Mr A.D. Oza for the petitioners

Mr UA Trivedi, AGP for the State

5. SCA No.394 of 1991

Mr Paresh M Dave for the petitioner

Mr UA Trivedi AGP for the State

Resp. No.2 served

6. SCA 1724 of 1991

Mr S.M. Trivedi for the petitioner

Mr UA Trivedi AGP for the State

7. SCA NO.861 of 1991

Mr M.M. Desai for the petitioner

Mr UA Trivedi AGP for the State

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CORAM : MR.JUSTICE R.K.ABICHANDANI

Date of decision: 28/07/2000

#### ORAL JUDGEMENT

In this group of matters the petitioners who are the educational institutions have challenged the orders by which their grants have been withheld on the ground that they do not own 15 acres of land for their schools as contemplated by Rule 125 of the Grand in Aid Code for the post basic schools.

2 The action in all these cases initiated by the District Education Officers was triggered because of the Government Orders issued on 20.6.1989 by which it was directed that the grant for the year 1988-89 should be released to such schools provided they were in possession

of 50% of the required land as per the Rules and that the ownership rights should be obtained by them in respect of such land and the remaining land should be acquired by them so that they can be given the grant for the current year. On the basis of these orders dated 20.6.1989 which were addressed to the Director of Higher Education, the Director in turn issued orders on 11.5.1990 to all the District Education Officers. In the communication issued by the Director of Higher Education the Government Orders dated 20.6.1989 were referred to and the District Education Officers were directed to effect recovery from the Educational Institutions which were not having 15 acres of land and further that no grants should be released to such institutions. It was endorsed below that direction that the pay bills forwarded by such schools should not be passed from June 1990 onwards. The District Education Officers on the strength of these directions of the Government and the Director of Higher Education issued orders on the respective schools withholding the grant on the ground that they did not own the land. To illustrate, in the order of the District Education Officer dated 6.12.1990, a copy of which is at Annexure-J in Special Civil Application No.394 of 1991, there is reproduced a communication on the reverse of that document to the District Education Officer from the Director of Higher Education stating that if the institution was not owning the land, it was not to be given the grant and that if the land was taken on lease, the school would not be liable to grant because it cannot be said to be a land belonging to the school. It is on the strength of this communication that the letter dated 6.12.1990 was addressed by the District Education Officer to the school concerned. Similarly, in Special Civil Application No.6129 of 1990 the impugned orders at Annexure-A, B and C also indicate that the District Education Officers had understood the directions of the Government contained in the order dated 20th June 1989 to mean that the school should possess the land on ownership basis for becoming eligible to the grant under Rule 125 of the Grant in Aid Code. Admittedly, in all other petitions the District Education Officers have proceeded to withhold the grants or refuse to issue fresh grants on the footing that the schools did not own 15 acres of land. In many of these petitions, as was noted during the arguments, the schools were having 15 acres of land. In some cases, they did have 15 acres of land but were not owners of the land. For the year 1989-90 it appears that Rule was relaxed and the schools which had at least 50% of the required area of land were released the grant with the condition that they should acquire the remaining land on ownership basis. The indication that the land

should be acquired by them on ownership basis in the order dated 20.6.1989 has triggered off the authorities for withholding the grants to many of the schools who were already receiving the grant for quite a number of years.

3 Admittedly, all these schools are post basic schools and agriculture is taught as the main craft. Rule 125 of the Grant in Aid Code, which is relevant, reads as under:-

RULE 125:

"The Schools which have agriculture as the main craft should maintain 15 Acres of land for the purpose of teaching agriculture as a main craft. The School will be paid grant at the rate of 50% of the recurring expenditure on craft limited to the deficit, and the school shall keep a separate account of receipts including income of products, and expenditure on the lines of other multipurpose Schools."

It will be noticed from the language of the above Rule that the foremost condition for the school which can be paid a grant thereunder is that it should have teaching of agriculture as the main craft and should maintain 15 acres of land for the purpose of teaching it. If this requirement is satisfied then, such school will be paid the grant at the rate of 50% of recurring expenditure on craft, limited to the deficit. Under Rule 126 the Government has discretionary powers and perhaps the relaxation which was given for the year 1989-90 in the directions dated 20.6.1989 issued by the Government was in exercise of such discretionary powers. Rule 125, however, does not speak of owning the land which is maintained for the purpose of teaching agriculture as the main craft. The words "should maintain 15 acres of land" occurring in Rule 125 would include not only the land which is owned as well as maintained but also any other land which is so maintained when the school is in its lawful possession. The word "maintained" would obviously mean in the context the land which is lawfully maintained by the school but will not necessarily imply ownership thereof. In fact, a land may be owned by the school and yet not possessed if it is given over to some other body in which case there would not be any question of maintaining such land which is owned but not possessed for the purpose of teaching agriculture. Therefore, lawful possession is the basis on which the question whether the land was maintained for the purpose of

teaching agriculture as a main craft is to be decided in the context of Rule 125 of Grant in Aid Code. The basis on which the action to withhold or refuse Grant under the said Rule as taken is, therefore, erroneous and the concerned authorities should not read the concept of ownership as the prerequisite for the grant under Rule 125 but should be satisfied with the concept of lawful possession of the land of the area required which is maintained for the purpose of teaching agriculture by the school concerned.

4 The conditions for grant are to be prescribed by the authority providing for the grant. Therefore, the Court cannot go behind the decision of the Government fixing the area of the land which is required for the purpose of teaching agriculture as the main craft. Therefore, the requirement of 15 acres appearing in Rule 125 of such land maintained for the purpose of teaching agriculture cannot be relaxed by the Court. If the schools do not satisfy that requirement, obviously, they would not be eligible to get the grant under that Rule unless the Government in exercise of its discretionary powers otherwise directs. The area which is prescribed has relevance with the purpose for which the grant is given which is of teaching agriculture as a main craft. Without sufficient area of land, it would obviously be difficult for any school to teach agriculture as a main craft. Therefore, if the schools are denied the grant on the ground that they do not lawfully possess and maintain 15 acres of land for the purpose of teaching agriculture as a main craft, such stand taken up by the authorities cannot be said to be arbitrary or irrational.

5 The question as to whether the adequate area of land as required by Rule 125 was lawfully possessed or not in all these cases cannot be gone into at this stage by this Court. Since the authorities had proceeded on an erroneous footing that ownership of land was the basic requirement for the purpose of eligibility for the grant under Rule 125, it would be necessary for them to reconsider the matter in light of decision of this Court that even lawful possession of the land by the school would qualify the school for the grant under the said Rule if it maintained 15 acres of such land for the purpose of teaching agriculture as a main craft and other requirements of Rule 125 were satisfied. In this view of the matter, the impugned orders and actions in all these petitions to the extent that grants are withheld or refused on the ground of want of ownership of the land, are hereby set aside and the concerned authorities are directed to reconsider the cases of all these petitioners

in the light of the observations made in this judgement and pass fresh orders within two months from the date of the receipt of the writ of this order in accordance with law. It will be open for the petitioners to make representations in their respective cases as stated by their learned counsel within two weeks from today. If such representations are made, they will be duly considered before making the order. Rule is made absolute accordingly with no order as to costs in each of these petitions.

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